

THE

601 f. 14 (15)

CASE

Of The

KERRRY

QUIT-RENT

1681.

GENESIS, 47 Chap. 23, 24, 25, 26, 27, v.

23, Then Joseph said unto the people, Behold, I have bought you this day, and your Land, for Pharaoh, lo, here is seed for you, and ye shall sow the Land.

24 And it shall come to pass in the increase, that you shall give the fifth part unto Pharaoh, and four parts shall be your own, for seed of the field and for your food, and for them of your household, and for food for your little ones.

25 And they said, Thou hast saved our lives: let us find grace in the sight of our Lord, and we will be Pharaohs servants.

26 And Joseph made it a Law over the Land of Egypt unto this day, that Pharaoh should have the fifth part; except the Land of the Priests only, which became not Pharaohs.

27, And Israel dwelt in the Land of Egypt in the Countrey of Goshen; and they had possessions therein, and grew, and multiplied exceedingly.

The Land was Pharaohs, and the Men his slaves

Yet but One Fifth for Seed and all, he craves;

The Tenants thrive and multipl'd, so as

The Rate of Fifths a Law for long time was.

But two Fifths, without Seed, from th' Owner's Soare,

'Tis thrice as much, as Pharaoh took, and more;

Well; have We three Fifths left? Not One, We say;

Strange Rules took two, Mistakes the rest, away.

What if for three years, We have pay'd Nineteen?

In Egypt Never so od a Rule was seen:

Do'nt Pharaoh cruel; Nor the worst bondage, stile
Egyptian; ~~but~~ in our Isle.

But first beg what

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807 f. 37

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601. f 14
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The CASE of the *KERRY* Quit-Rents. 1681.

Courts of Judicature are open to all comers, and Those who bear their proceedings, are Judges, even of the Judges themselves. Now the persons concerned in this Case have had the Judgment of so many By-standers (whilst their Cause was Arguing in the Exchequer.) That they are encourag'd to expose it in Print to the Judgment and Cognizance of the whole World. And have together with their Case Printed an Affidavit also, which may serve as a Juramentum Calumniae, Importing that they themselves think well of their own pretensions and that what they contend for, is not a small or frivolous matter, and may perswade the Reader, that the grounds whereupon they proceed, are not onely true, but that the dealings which they have had upon them are Wonderful.

They are not unmindful that to Print their Concernments is lyable to many dangers and Inconveniencies ; But believing that their Arguments are founded upon Eternal Truths, not temporary Tricks, They hope that no Caprice, Prejudice, Revenge, Surprise, sly Insinuation, Ridiculing of Right, pretence of Intricacy, power of Factions, Envious disposition, nor other secret causes can finally prevail against Laws founded upon common sense and reason ; Wherefore, and for that they expect their Adversaries will also be upon Oath, and in Print, concerning this Matter, They venture out and say, that the Case of the Kerry Quit-Rents consists of these principal points or questions viz.

T Here is a Survey, wherein the Quantity of profitable Lands is set forth in two severall Columns. The one commonly called the Extream Collumn. And the other, the Reduced Collumn.

Now the Question is, By which of these two Columns the Kings Quit-Rent ought to be charged and paid? *The other principall point is*

2 Whereas the Plaintiffs have enjoyed the Lands set out to them, scarce three years of 21 years and a half, and the Kings Ministers have disposed of them for the rest of the time. The question is, whether by the intention of the Clause in the 37th. page of the Explanatory Act, (which is to encourage Plantation) the Quit-Rents be not fully satisfied, which Collumn soever be the Legal Measure, or what money soever be the true Value of the Lands; so as the Plaintiffs at the end of the said 21 years and a half, might justly be restored, or rather admitted to the possession of their Lands?

Many who have been acquainted with these Questions, need not to have them explained, But the rest of the World (for we address to the whole World) must ; Wherefore we say as followeth to the first, viz.

1. That Soldiers (whose Lots fell in *Munster*) were for satisfaction of their service, To have Lands at 9. shillings. the Acre, at a time when Lands were not worth 7 years purchase, (Though we shall reckon them here at ten:) So as the Lands must be worth about ten pence three farthings per Acre, to make such a satisfaction; and because about 3 pence three farthings must be paid out of it as an yearly Quit-Rent to the King, The Lands must be worth 14

pence half peny the Acre, or otherwise it will not be satisfactory or profitable in the fence of the Law.

2. In some parts of *Munster*, much Lands were wholly unprofitable (as *Logh*, being no Land at all, Rock, upon which no grasse Grew; Bogg, on which the little that grew, was inaccessible but in some few monthes of the year. And in this same Country, few Lands were worth above 2 s. 6 d. the Acre before the Wars (when they were, and might be peopled and enjoyed and *Anno* 1655 when the same was Surveyed not $\frac{1}{3}$ thereof) So as almost the whole County consisted of Lands dubiously, confusedly and intermixt profitable, worth before the Wars between 1 d. and the said 2 s. 6 d. per Acre; The Medium whereof is about 15 pence half peny as the value of indifferent good pasture Lands, and no Ill Standard and Measure of profitable Lands, in Order to a competent satisfaction of the Soldiers.

3 In Order to this Survey, an Instruction was given, Printed and published *Anno* 1654. for distinguishing between profitable and unprofitable in these words.

You are to distinguish by admeasurement, the profitable, from the unprofitable, or return by good Estimate, the Aliquot part of the same, in case the One lyes dubious, and confused (Or in very many, and very small spots) among the other.

The meaning whereof was, That if the distinction or bounds between profitable and unprofitable were very plain and cleer, that the distinguishment should be made by Lines, to be Geometrically admeasured and described; But where a parcel of Land containing in Geometrical content, (suppose) 100 Acres had no more Tussocks of Pasturable grasse growing within its whole circumference, then were equal to 25 Acres; Or if the whole 100 Acrers, were accessible for Cattle, but 3 monthes in the year; or if but one quarter of the grasse were good food, and the rest useles weeds, or that 4 Acres thereof were worth but one Acre of the worst Arable in the same parish or Barony; or about 15 d. per an: We say, that the meaning of the said Instruction was, that the Surveyors should by good Estimate return the Aliquot part, by saying (as in this Instance) that the said Parcel of Land did contain 100 Acres, whereof one quarter was profitable, or indifferent pasture, or (which is all one) whereof 4 Acres are Equivalent to one of profitable, or indifferent good pasture or course Arable, or whereof 4 Acres are worth about 15 d. the intended value of one satisfactory Acre.

4 In pursuance and according to this Instruction, the Surveyors have returned Books in these several forms folloing viz.

(5)

IN KERRY. Down Survey.

1	2	3	4	5	6	7	8
Numbr in the Plot,	Proprietors Names,	Denominations of Lands,	Number of Acres by admeasurment,	Lands Profitable,	Lands Unprofitable,	The Value of Course Pasture shewing how many Acres is worth one of good Pasture,	The Profitable reduced according to the value, or deduction being made according to the Value,
		<i>Brofna,</i>	40,	40,	—	—	40,
		<i>Killen,</i>	50,	40,	10—	—	40,
		<i>Rossan,</i>	120,	120,	—	—6—	20,
1	2	3	4	5	6	7	
Num-ber in the Plot,	Proprietors Names,	Denominations of Lands,	Number of Acres by Admeasurment and the quality of the Lands part- Profitable,	Acres equal to one in value,	Lands Profitable	Lands Unprofitable,	
		<i>Brofna,</i>	40	—	40,	—	
		<i>Killen,</i>	50	—	40,	10,	
		<i>Rossan,</i>	120	—6—	20,	—	

And in Tirawly Down Survey.

1	2	3	4	5	6
Number of Reference,	Proprietors Names,	Denominations,	Total Content,	Profitable,	Unprofitable
		<i>Brofna,</i> —	40,	40,	—
		<i>Killen,</i> —	50,	40,	10,
		<i>Rossan,</i> — $\frac{1}{6}$	120	20,	100,
		Profitable $\frac{1}{6}$			

And in Straffords Survey of Conaught and Clare made before the Wars.

1	2	3	4	5	6
Number,	Proprietors Names,	Denominations,	Profitable,	Mixt,	Wast,
		<i>Brofna,</i> —	40,	—	—
		<i>Killen,</i> —	40,	—	10, 0, 00,
		<i>Rossan,</i> $\frac{1}{6}$	—	120, 0, 00,	—
		Profitable $\frac{1}{6}$			

All which Down Surveys were delivered into the Surveyor Generals Office in manner and form aforesaid, after many sorts of previous examinations, and after the Bonds for making the said Survey were delivered up and cancelled anno 1657. and before the Lands in question were set out, (which were

were set out by the reduced Collumn,) and the said Surveys and distributions were confirmed by pages 31, and 33 of the Act of Settlement; But most of all by pages 9 and 10. As also by pages 21, 22 and 23 of the Explanatory Act, even with all their faults, if any were in the same.

5 After this Survey was so Recorded, 5 certain parishes in *Munster* were given out in satisfaction of 9295 *l.* at the Act rates of 450 *l.* per Thousand Acres; which said parishes do contain 21000. Acres by the reduced Collumn, and do just answer the said debt. but contain 138 thousand Acres of Lands dubiously and confusedly profitable, by the extreme Collumn; which Number payes it neer 7 times over, and the Civil-Survey (made by the Oaths of the most experienced Inhabitants of the place, by a Jury and before sworn Commissioners; returned the same Lands to contain 20700 Acres, which the Reduced Collumn of the *Down* Survey makes 21000 Acres as aforesaid; and is more then the Civil Survey, (which is also approved by the Act,) doth make it.

6. Upon some Mistake of charging Quit-rents (by unexperienced persons soon after His Majesties Restauration) according to the Extreme Collumn; His Majesty *anno* 1662, rectifies the same by bringing down His Quit-rent, to the Reduced Collumn. The Court of Exchequer *anno* 1663 do the same by 2 formal Judgments. The Lord Lieutenant and Council did also Report unto, and advise His Majesty to have the said Reduced Collumn Juditially establisht. And two of the present Judges of the Exchequer and several other Judges (*anno* 1677. upon their Settlement of *Conaught*) charged Quit-rents only upon the Aliquot part profitable; And the Kings Attorney General in 4 Replications to the Plaintiffs Plea, hath confessed; That the Extreme Collumn, (though in some places intituled Profitable) contains Lands but *dubiè & Confuse utiles* and that the Reduced Collumn contains the number of Acres satisfactory; and is the Method of the *Down* Survey.

Moreover, not only several parts of the Survey Books do expound one another, but the Authors of the said Survey (besides their former Oaths) have (*viva voce*) in open Court Sworn the Intension of the said Survey to be as aforesaid.

8 It is to be further Noted as followeth *viz.*

1. That the aforementioned 21000 Reduced Acres of the said 5 parishes are returned by the Civil Survey to have been worth before the Wars 1232 *l.* 8 *s.* 6 *d.* which is just 14 *d.* the Acre. Out of which 3 *d.* $\frac{3}{4}$ Quit-Rent must be paid. Now some of the Reduced Acres, are compounded of 40 Geometrical Acres standing in the extream Collumn: But to charge the said 40 Acres (worth but 14 *d.*) with 40 times 3 *d.* $\frac{3}{4}$ or 12 *s.* 6 *d.* Quit-Rent, is absurd and impossible, especially when according to the common Level of the whole Nation, the Quit-Rent of such Lands would be under 2 *d.*

2. The Adventurers had the best Lands in *Ireland* allotted to their satisfaction, and yet one quarter thereof, is returned for absolutely unprofitable, and chargeable with no Quit-Rent at all: But here, scarce $\frac{1}{40}$ part is re-

turned for absolutely unprofitable, which shews, That the unprofitable doth stand in the Extream Collumn, intermixt with the *Dubie & confuse Utiles*, as the Attorney General and the Printed Instruction call them.

3 In the Books of *Corcaguiny*, The Extream Collumn (which is in some other places intituled *Profitable* though in the sense aforesaid) is intituled *Part Profitable* and the Reduced Collumn hath no other Title then *Profitable* In this Barony there are no pasted Labells; Nor hath Sir *Wm: Petty* or *Rob Marshall* any interest in the same? Nor is the Collumn of totall contents (being the same with the 4th Collumn in other places) at all expressed: so as in this Barony, The reduced Collumn is most indisputably and litterally meant and expressed for the profitable measure, and this Barony Was returned upon the same Instructions, and by the same hands as the rest were. The Maps in both, are a like, though the form of the Collumes do differ, and in both places, the difference between the contents of both Collumnes, is thus expressed viz. [*Acres to be deducted to make the other Profitable*] Which is the same as to say, [*Acres to be deducted out of the extreme Collumn, to make the Acres of the Reduced Collumn; profitable*] So as the Title *Profitable* in the extreme is, and must be interpreted by the 7th Collumn of values or Aliquot parts, which is an Integral part of the *Down Survey*, and can signify nothing else. Thus the 5th Collumn may as well be called *Profitable* as a stack of Corn may be called *Corn*: Besides, there stand many parcels in the said extream Collumn, which in Truth are wholly & absolutely *Profitable*, & never reduced to a lesser Number in the subjoyned Collumns, as hath been rashly and vainly alleadg'd. Now these parcels wholly profitable, and all the rest being part profitable, had, (upon good consideration) the Title of profitable put over them; Because the Collumns immediately adjoyned, as also the Maps, Abstracts, Instructions, Values and *Corcaguiny*, besides the Surveyors themselves, did all expound and limit the same in that sence which all Unbyassed partys have still understood and adjudged it, The Other meaning being absurd and Naturally impossible. And even the Court of Claimes did allow 54000 Acres of Lands profitable according to the extreme Collumn in satisfaction of 2551 *l.* which is 9 times more then was due at the Act rates of 450 *l.* per thousand Acres.

Objections to the Premissies.

ALTHOUGH the Lands in question were set out by the Reduced Collumn, as aforesaid and no alteration or correction was made thereof by page 33 of the Act of Settlement. Though the King and Government allowed the Reduced Collumn anno 1662. and 2 Judgments passed for it anno 166 $\frac{3}{4}$ though the Court of Claimes allowed 54000 Acres by the extreme Collumn to pass in satisfaction of 2551 *l.* debt, Though the Lord Lieutenant and Council represented to the King the Inconveniences

of the extreme Collumn *anno* 1670. and though the present Chancellor and Lord Chief Baron of the Exchequer, together with the Lord chief Justice Booth and Sir Richard Reynell charged all quitrents in *Conaught Anno* 1677 upon the aliquot part & not the extreme measure; yet John Marshall was advised to plead *Anno* 1678, To which the Attorney General Replied in behalf of the reduced Collumn once, twice, thrice & a fourth time, and the late farmers (designing to gain 30000 *l.* by the extream Collumn,) did, after 2 yeares sinister machinations, upon the 20 January 1680, object as followeth.

Viz.

Object. 1. *That the Column of aliquot parts or values and the reduced Collumn, were sinisterly pasted on to the Books of the Survey, since their being put into the Office.*

Answer. The contrary was proved by those who made them, and the view of the Books doth shew the same to be Impossible, and where the reduced Collumn is clearest, There are no pasted Labells at all.

Object. 2. *The latter Branch of the Printed Instruction, was not Intended for distinguishing Profitable from Unprofitable, and therefore did not Warrant the distinguishment as it stands in the Reduced Collumn.*

Answer. The Surveyors Swore they understood it so, and Acted accordingly, and their work was admitted after special debates there upon; Besides the words of the Instructions explain themselves.

Object. 3. *That the said Latter Branch was only to exempt the Surveyors from measuring small parcells otherwise then by Estimate.*

Answer. Their First Instruction Oblidged them to measure the smallest parcells, of Forfield Lands; and their Books are full of parcells under ten Acres, and some of under an Acre, are returned by their Quantity, Figure and Scituation, and not by Estimate.

Object. 4. *That the Instruction (if it were intended for distinguishment of Profitable from Unprofitable) was not pursued: But instead of such Distinguishment, There was onely a Par made between the best and all other Lands, by setting forth how many Acres of the latter, was worth one of the first, or best.*

Answer. The Fact is denied, for the Par, was between doubtful intermixt Lands and indifferent Good Pasture, or the Course Arrable of the place, which is the same as Profitable: so as the Reduced Acre (though compos'd of 40. Acres) was worth but about 14 pence before the War (as appears by Record) and Lett *Anno* 1678 for less, by the late and present Farmers.

Object. 5. *The Surveyors had no Standard whereby to make this Par and therefore the same is a meer Whimsy, and void.*

Answer. 1. They had a better Standard for this distinction between profitable and unprofitable, then they had for doing it by Lines.

2. They had the value before the Wars, and the advice of the most experienced men of the Country, In so much as they did not differ from the civil Survey (allowed by the Act) above 500 in 21000 Acres.

Object. 6. *They did not return how many Acres of course Land was worth*
One

One of Profitable, but of Pasture, and so varied from their Instructions.

Answer. In *Straffords Survey*, Pasturable and Profitable was taken for the same thing: (most Lands being Profitable but as they are Pasturable) for what is termed Pasture in the Columns, is called Profitable upon the Maps of *Straffords Survey*, as it also is on the *Kerry Survey*.

Object. 7. The Instructions require the returning of the aliquot part, But the Survey Mentions no Aliquot part, But how many Acres of course is worth one of Good, or the like.

Answer. Tis The same thing to say That the Lands A, are One Quarter Profitable, or Pasturable, as to say, That 4 Acres of A, being course Dubious intermixt Lands, are worth One of inditerent good Pasture, viz. such as was worth 14. d. the Acre before the Wars.

Object. 8. The 4th Column (which is the total content) seemes to be the extreame Column, and the 5th, (now called the extreame) to be the reduced Column, and the 8th. (now called The Reduced Column) to be an Unreasonable Reducement upon a Reducement.

Answer. 1. The total of 2, or more Numbers, is never called the Extreame of such Numbers, Nor is the part of a total, ever Termed, the Reducement thereof. 2. No Lands intirely Profitable (standing in the 5th Column) was reduced in the 8th. but were the same in both. Lastly, In some Baronies, the 4th. Column is wholly omitted, being onely the Result of other Columns, and put in for Conveniencie onely.

Object. 9. The 5th, or Extreame Column hath for Title the Word [Profitable] in most Places.

Answer. In that Title the word Profitable must be understood *dubious intermixt Profitable* made clear and neat Profitable by the 7th. Column, and set off in the 8th. Column, As a Stack of Corn is called *Corn*, though mixt with straw & Chaff; but the same being Winnowed by the 7th. Column, The 8th Column doth contain the Corn in the sack, or fit for use, so as the 5th, 7th, and 8th Columns, are as three Syllables of the same word? Nor can either of them be used alone or a part:

2. The Surveyors have sworn this to be their meaning in their Returnes, The Bookes themselves shew it, but the Maps and abstracts more expressly, Besides; in the Barony of *Corcaguiny*, The extreme Column hath for Title [*part Profitable*,] and the Reduced Column hath for Title [*Profitable*] and this Barony was Surveyed by the same hands upon the same Instructions with the rest. Moreover, The Maps are alike, even where the Titles differ; and the words [*Acres to be deducted to make the other Profitable*] are in both Forms? Nor were the Surveyors limited to the method of their Columns, and the variety of their wording doth best prove the unity and Identity of their meaning.

Object. 10. These Aliquot parts or values, are nowhere but in Kerry? nor there, but where Petty and Marshal are concerned.

Answer. The Aliquot parts (or Reduced Column which is the same thing) are in 4 Baronys of *Kerry* where *Petty* and *Marshall* are not at all concerned, Nor have they any interest in *Tirawly* nor in the rest of *Conaught* or *Clare*.

The aliquot parts are also in the *Down Survey* of *Tyrawly* and every where in *Conaught* and *Clare*; And although these three Surveys are represented in three several Forms, Yet in Substance, and in their Maps, They are all One, and the very several Forms are Convertible each into the other

Object. 11. *That the Law saith the Profitable Acre ought to consist of 160. Perches, but by admitting the Reduced Collumn, the said Acre may contain 2000. or more Perches.*

Answer. If in a Surround of 2000. Perches, the Tussocks and spots of Pasture, amount but to 160. Perches, Then the Whole Surround is but one Acre Moreover, notwithstanding this Law, 5000. Perches, were charged but as one Acre in *Conaught* by the present Judges of the Exchequer, and other. Judges also, in the year 1677. upon the Settlement of *Conaught*.

Object. 12. 1 *Those that set out Lands Anno 1655.*

2. *Those who charged Quitrents Anno 1661.*

3. *And the Court of Claims, did all take the extream Collumn for the legal content.*

4. *And Dr. Petty was paid for Measuring according to the same.*

5. *Nay, those who had judgments for the Reduced Collumn did afterwards quit them, and submit to the extream, without Reluctancy.*

Answer. These 5. Objections are briefly answered thus.

1. *Those who set out Lands by the Extreme Collumn did it,*

1. *Before the Survey was settled, and without Order.*

2. *By private Agreements, not publick Authority.*

3. *In a way (by depressing the Act Rates) which was Equivalent to the doing of it by the Reduced Collumn, and according to what was then a Law.*

2. *As to charging Quitrents by the Extreme Collumn, It was done by unskilful persons most erroneously, and soon after corrected by the King, & Chief Governours of Ireland, and by two Judgments of the Court of Exchequer. And all this, before the Down Survey or Quitrent was confirmed by the Acts.*

3. *What the Court of Claims seemed to do, was done by their Sub-Commissioners who Acted by bookes which had not the said 2. Collumns in them, who were under a Byas of Acrage, and what they did of this kind in the Lord Dillons decree, was afterwards corrected by the Exchequer.*

Moreover, the Court of *Claimes* themselves allowed 54000 Acres in satisfaction of of 2551 *l.* debt, whereas less then 6000. Acres answers the same.

4. *That Dr. Petty was paid by the Extream Collumn, is a matter uncertain and full of questions: But if he were not, he ought to have been so paid by the Extream Collumn for that his Contract bears it, and because he ought to have rather more then less wages, for measuring of Bogs, Rocks, Shrubs and Loghs, and for making of extraordinary Collumns and Estimates, then for Measuring of plain and pleasant places.*

5. *Those who quitted the Judgments which they had for the Reduced Collumne, did it for far greater Advantages- And those who suffered them so to do, and to Retrench by the Extreme Collumn (to the great damage of the common stock) may at some time or other be question'd for it. For all these Transactions were made truly *Subsilentio*; And whether they be good or not, must be left to the Law,*

Anno-

Another sort of Objections.

Object. **T**Is Dangerous to alter what the Court of Claims have once done and Executed.

Answer. The charge of Quitrent made by the said Court was Judicially altered in the Lord Dillons Case, being the very same with this? 2, This Act of the Court of Claims was but Ministerial.

3. They were [*though worthymen*] both Judges and parties in this matter.

4. They held forth an Easier Quitrent viz That of an half peny per Acre by the extream Collumn; so as *Marshalls Lands in Dunkeron* (which are chargeable with 103 l. by the Reduced Collumn) would at an half peny per Acre by the extream Collumn, come but to 74l. which sum stands still in their Certificate.

5. Moreover the Earl of *Essex* his Reducement did superseed what the Court of Claims had done; 6. Besides they Acted by defective Copies of the *Down Survey*, in Which the Reduced Collumn was wholly omitted.

Object 2. *That the Earl of Essex had moderated these Quitrents from 492 l. to 148 l. per annum, and that his Certificate [taken out thereupon] was an Estoppel to the Pleadant's claiming the Reduced Collumn.*

Answer. 1. The Lawyers have by Book-Cases shewn, that the mention of an Estoppel, is not onely Odious but in this Case Illegal, and dishonourable to the King.

2. It was never pleaded to be an Estoppel in the Attorney Generalls four Replications, and that tis too late to plead it now.

Lastly, The Earl of *Essex* his Certificate was not to take Effect, till Letters Patents were accepted upon it, which was never done, because the said Certificate had many things in it, which [*in respect to those who made it*] shall not be mentioned? Nor had the Earl of *Essex* &c. any intention or authority to raise Quitrent above the Law, But to abate them so much below the Law, as might encourage Plantation.

Object. 3. *Although the Attorney General hath confessed that the Reduced Collumn is an integral part of the Down Survey and made upon the Printed Instructions, that the Method of this Survey, is the Rule for satisfying the Soldiers and charging Quitrents, That the Lands in the Extream Collumn are but dubiè & confuse Utiles, That the Lands in the plea were set out by the Reduced Collumn, That the Conaught Survey is the same as in Kerry, and that the Charging of Quitrents there, is the same as is demanded here &c.*

It was said, That his Confession (though so often and deliberately reveiued) was of little weight.

Answer. The Law-Books shew, that in Matters of fact, his Confession binds the Court, for otherwise his Confession was of lesser force then that of the meanest Attornyes which bindeth his Clyent; Besides, the Fact confessed; was all proved over again before the Court.

*A Third sort of Objections, were Answers to what Marshal had pleaded
viz.*

Object. 1. **T**hat the 2 Judgments of the Exchequer in behalf of the Reduced Collumn, passed *Subsilentio* and were afterwards declined.

Answer 1. They were exposed to all persons concerned.

2. The Record publicly read in Court.

3. They were grounded upon Certificates of the surveyor General and the oath of the particular surveyor.

4. The King, the Lords Justices, Lord Lieutenant & severall Judges and privy counsellors allowed the same & the like things; moreover the said Judgments were declined *subsilentio* for sinister ends, & for greater advantages but never Judicially or otherwise null'd to this day. Lastly, it appears not how little, or how much that *Strepitus* must be, which the Law calls *Silentium*.

Object. 2. That though 54000. Acres seem to have been set out for 2551 l. which sum requires but 5668 Acres at the Act Rates of 450 l. per thousand Acres in Munster, yet in truth 5668 Acres were only set out in satisfaction of the said debt, and that the rest [being above 48000. Acres] were cast in for satisfaction of Incumbrances and Chiefryes wherewith the Lands were charged.

Answer. It is strange That the Incumbrances were 8 times more then the Value of the Land? or that 5668 Acres of cleer Lands could not have been found amongst the 54000 Acres inserted into the Certificate of the Court of *Claiues*; besides such a way of proceeding is without precedent, as well as without Reason.

Object. 3. That although the Lord Lieutenant and Council upon report of the Committee of the Council, (by Instruments signed by the Lord Lieutenant, Lord Chancellor, Lord Chief Justice, Lord Chief Baron and many others) had recommended the Reduced Collumn to be Judicially confirmed, (as it had formerly been) That the extreme Measure had been a loss to the King, and would intitle the Farmers to Defalcations &c. Yet the King had done nothing upon it

Answer. The King (by his several Letters since) hath pressed the Consideration and Settlement of the Reduced Collumn; and this plea it self was filed upon an Order of the Lord Lieutenant and Council in Trinity Term 1678, grounded upon his Majesties said Letters, and after the Earl of Essex his Reducement to 148 l. had been made.

Object. 4. That the Conaught Survey was not like the Kerry Survey, and that if the Late Commissioners for the settling of Conaught had charged Quitrents onely upon the Aliquot part, and not the extream content, It did not concern the Pleadant to take notice of it.

Answer. 1. The Kerry and the Conaught Surveyes are the same in substance and in their Maps, though they do differ onely in the form of their Books of Reference.

2, The

2, The Reason of charging Quitrents in *Conaught* by the *Aliquot* part, is far less, and less Warrantable then in *Kerry*, and those transactions are produced by the Pleadant as precedents *à fortiori*; for that the Reduced Acres of *Conaught*, are of Triple value to those in *Kerry*; And for that the present Chancellor, and Lord Chief Baron of the Exchequer, were Judges and Commissioners with the Lord Chief Justice *Booth*, and Sir *Richard Reynel* for *Conaught*: so as these Transactions were also pleaded as Arguments *ad hominem* as well as *ad rem*.

*As to the other Chief Question,
viz.*

WHether, according to the true meaning of the Clause in the 37th Page of the Explanatory Act (Which appoints, That the legal Quitrents shall be so Moderated as to encourage Plantation) That for scarce three years enjoyment of the Premises, The Kings Ministers shall dispose of them the remainder of 21 years and a half, and (We might add) give the profits of them to those who never had any right thereunto, and who have Grossely contemned and Violated the Orders of Court made concerning the same?

As to this question, We shall onely leave the Reader to an affidavit made the 25th of *July* 1681, before the Lord Chief Baron and hereunto annexed, until further proceedings shall call for a larger discourse both upon this, and the former question also? Onely Noting for the present, That out of the said Affidavit, there do arise the following Arguments for discharging of the said Lands from all Seisures *Custodiams* &c. *viz.*

1, *Arg.* It is most certain that the King hath had these Lands by seisure & *Custodium* from *Easter* 1675 to *Michaelmas* 1681, which is 6 years and a half, and that the Grantees never medled with them in any measure, but between *Michaelmas* 1668 and *Easter* 1675, Which is also 6 yeares and a half: so as by the severest Rules that ever were conceived, the King was never to have one half of the Profits for his Quitrent, as (in this Case) he hath had.

2, *Arg.* It is certain, That (besides the said 6, years and a half from 1675 to 1681.) the King and others (under him) did also possess the premises from *Easter* 1660 to *Michaelmas* 1668, which is 8 yeares and a half more, making in all 15 yeares, which is certainly sufficient to pay the Quitrent for 6 years and a half,

3 *Arg.* of the 6 years and a half (hitherto supposed to have been enjoyed by the Grantees) It will appear, That not 3 years of the said 6 years and a half, hath been so enjoyed by them, *viz.*

1, By Reason of Levari's and Seisures happening within the said 6 years and a half.

2, By the Usurpation of certain persons called *REFRACTORIES*.

3, By the frequent and cruel distrainings of the late Farmers for what was neither due nor possible to be paid.

4. For that the 2392 *l.* (acknowledged to have been recieved) is not full 3 yeares Rent according to the Leases by which the Grantees did, or might have let the same, if they might have been quiet.

Wherefore 3 yeares and a half of the said 6 yeares and a half, was held by the King and those who directly or indirectly made use of his Name; so as the said 3 yeares and a half added to the last mentioned 15 yeares, makes 18 yeares and a half, and is a sufficient quitrent for the other 3 yeares,

4. *Arg.* The said 2392 *l.* is not 2 yeares and a halfs Rent according to the present *Custodium* Rent of 1120 *l. per annum*; so as the Question now is, whether 19 yeares be a sufficient Quitrent for 2 yeares and a half?

5. *Arg.* The said 2392 *l.* is not One year and a halfs Rent, at the Rate of 1830 *l. per annum*: which the Farmers have certified the Lands, which yeilded the said Money, to be worth; so as the last Question? is, whether 20 yeares, be not a sufficient quitrent for one year and a half, Whereas by the Earl of *Essex* his most severe Rule, one year should suffice for that purpose: so as the other yeares (all quitrents being discharged,) together with the value of the said Woods) is to be accompted for, to the Grantees:

6 *Arg.* Moreover, although the Earle of *Essex* and the other Commissioners made a Rule, That $\frac{2}{5}$ parts should be given to the King for Quitrent, (against which, there are many weighty Objections) yet even according to that Severe Rule it self, The King was paid his quitrents by Anticipation, even in that proportion up to *Easter* 1681 by the first 8 yeares and a half; for that 8 yeares and a half, is the $\frac{2}{5}$ of 21 yeares; & a quarter; But It will rather appear, That the King had these Lands ten yeares before the Grantees had any profit at all out of them, and consequently was paid up till the year 1685; and moreover that he had held them the Equivalent of 15 yeares, when the Grantees had held them but three yeares before the *Custodium* was granted *Anno* 1678; And also that the said *Custodium* was granted after his Majesty (by the advice of the Earl of *Essex* himself and Lord high Treasurer of *England*, in his Letters of the 28th of *April* 1676 and the 8th of *December* 1677) had directed the contrary.

These 6 Arguments (rising gradually one above another) We hope, will be as *Easy stairs* by which the Lamest understanding may get up to the Top of this Truth; to wit, That the said Lands ought now, to be (and long since to have been) discharged from all seizures, *Custodiums* &c. even according to the severest Rules that ever were made in pursuance of the said Clause in the 37th Page of the Explanatory Act; But much more, according to the Rates made by the Lord Lieutenant and Council, and according to the dictates of common sense and Reason, and the common Rule of the whole Kingdom, For if but one year in 8, or if but $\frac{1}{8}$ part of the Profits be generally given to His Majesty for Quitrent throughout the whole Nation; then It is wonderful, That above 18 yeares disposure of the premises should not have satisfied the Kings quitrents for the Grantees enjoyment of the same but 3 yeares onely. As the Subsequent *Affidavit* Importeth.

The Affidavit made before the Lord Chief Barron Hene.

